THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.5770 OF 2004

AND

WRIT PETITION NO.17473 OF 2005

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DATED: 14TH MARCH, 2006.

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Between :

Habeen Shums … Petitioner

And

A.P. State Wakf Board, rep. by its

Chief Executive Officer Sri S.M.Ahemed Ali Khan,

Razaq Manzil, Nampally, Hyderabad. … Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.5770 OF 2004

AND

WRIT PETITION NO.17473 OF 2005

COMMON ORDER :

These two writ petitions which are based on the same set of facts and between the same parties are heard together and decided by this common order.

The facts, in brief, may be noted as under :

One Mohd. Abdul Bari filed W.P.No.21687 of 2003 by way of Public Interest Litigation seeking a declaration that the Chief Executive Officer, A.P. State Wakf Board is bound under the Wakf Act, 1995 to take the mosque known as Masjid Kavelu situated at 13-2-658, Rahmeem Pura, Puranapul, Hyderabad under its direct control and management. The said writ petition was disposed of by a Division Bench of this Court by order dated 3-11-2003 with the directions as under :

> *"In the circumstances, no other order is required to be passed in this writ petition except directing the third respondent – Chief Executive Officer, A.P. Wakf Board to treat this writ petition itself as a representation and pass appropriate orders thereon in accordance with law within a period of two months from today and in case the property in question is a Wakf property, third respondent will take appropriate steps to take over effective control and management of the said wakf property.*
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> *With the above direction, Writ Petition stands disposed of."*

In pursuance of the said order of this Court, the Chief Executive Officer, A.P. State Wakf Board passed an order dated 4-3-2004 taking the wakf as well as the attached properties at Rahimpura under direct management of the Wakf Board. The said order is under challenge in W.P.No.5770 of 2004.

During the pendency of the said writ petition (W.P.No.5770 of 2004), the Chief Executive Officer, A.P. State Wakf Board vide proceedings dated 4-6-2005 constituted a Managing Committee to the wakf in question under Section 18 of the Wakf Act, 1995 for a period of two years, which is under challenge in W.P.No.17473

of 2005.

The petitioner in both the writ petitions is one Habeeb Shums. He claims that the mosque in question (Masjid Kavelu) was constructed in 19th century by his grandfather Capt. Syed Hasan. After the death of his grandfather, his father by name Major Habeeb Ali was looking after and managing the Mosque in question from 1951 onwards. The petitioner claims that after the death of his father, he took over the management and administration of the mosque in question and has been maintaining the same for the past four decades. It is further claimed that the mosque remained as private property and was not registered with Wakf Board at any point of time. He constituted a Mosque Committee who is entrusted with the maintenance, welfare and control of the mosque. It is alleged that the petitioner in W.P.No.21687 of 2003 – A. Bari was appointed by the Mosque Committee as chowkidhar to look after the mosque and take care of its properties. However, he has not only mismanaged the properties of the mosque but also indulged in some criminal activities and therefore the Mosque Committee passed a resolution dated 30-09-2003 to remove Mr. Bari with immediate effect. Aggrieved by the same, he resorted to a Public Interest Litigation by filing W.P.No.21687 of 2003 making all false and frivolous allegations. In pursuance of the order in the said writ petition, the Wakf Board passed a resolution dated 18-2-2004 to take over the institution under direct management of the Wakf Board. The petitioner contends that the resolution as well as the consequential impugned order dated 4-3-2004 are arbitrary and illegal since the same is not in conformity with the provisions of the Wakf Act. The petitioner contends that the institution in question is not a wakf property and therefore the Wakf Board has no right or authority to take over the same under its direct control or management. It is also contended that since the petitioner or the mosque committee had no notice about the impugned action and since they were not afforded any opportunity to raise their objections, the order dated 4-3-2004 is not only contrary to the statutory provisions but also in violation of the principles of natural justice.

So far as the proceedings dated 4-6-2005, impugned in W.P.No.17473 of 2005 are concerned, it is contended that the respondent ought not to have constituted a committee during the pendency of W.P.No.5770 of 2004 in which the authority of the

Wakf Board to manage the institution is questioned.

I have heard the learned Counsel for both the parties.

A perusal of the order impugned in W.P.No.5770 of 2004 shows that the mosque in question with its attached properties to an extent of 333 sq.yards was notified in the Gazette dated 3-5-1984 as wakf property and the same was under the Towliath of Sri Md. Mahaboob Ali Khan, Secretary, Mosque Committee. In the circumstances, in pursuance of the order of this Court dated 3-11-2003 in W.P.No.21687 of 2003 the matter was placed before the Wakf Board in its meeting held on 18-2-2004 and the Board has unanimously resolved vide Resolution No.1335 of 2004, dated 18-2-2004 to take the subject institution with its attached properties under direct management of Wakf Board. Accordingly an order dated 4-3-2004 was passed by the Chief Executive Officer, A.P. State Wakf Board taking the wakf and its properties under the direct management of the Board.

The contention of the petitioner is that under Section 40 of the Wakf Act, it is mandatory to issue a prior notice to the petitioner before passing such an order. Since no such notice was issued and no enquiry was conducted, the learned Counsel for the petitioner submits that the impugned order is liable to be set aside and the possession of the property shall be restored to the petitioner.

At the outset, it is to be noted that the mosque in question was notified as wakf in the Gazette dated 3-5-1984. The petitioner has never challenged the same and for the first time in this writ petition he raised a dispute on the ground that the wakf in question is a private property and was never registered with the Wakf Board.

Under Section 40 of the Wakf Act, whenever a question arises whether a particular property is wakf property or not, then the Wakf Board after making such enquiry as it may deem fit, decide such question.

However, in the case on hand, the specific case of the respondent is that the

mosque in question with its attached properties was notified as wakf property long back in the year 1984 and it was so published in the A.P. Gazette, dated 3-5-1984. Once, such a publication is made under Section 5 of the Wakf Act, 1995, if any question arises whether the said property is wakf property or not, any person interested therein may institute a suit in a Tribunal for the decision of the question as provided under Section 6 of the Wakf Act.

In the counter-affidavit filed on behalf of the respondents, the plea of the petitioner that the mosque in question is a private mosque has been categorically denied and it is stated that the entries from the report of the Survey Commissioner and the Gazette Notification dated 3-5-1984 make it clear that it is a registered wakf property.

In the circumstances, the learned Counsel appearing for the Wakf Board submits that the petitioner, if aggrieved, ought to have initiated appropriate proceedings before the Tribunal constituted under Section 83 of the Wakf Act, 1995 and without exhausting such remedy, the petitioner cannot maintain this writ petition.

However, the learned Counsel for the petitioner while placing reliance upon a decision of the Supreme Court in KARNATAKA BOARD OF WAKF v. GOVERNMENT OF INDIA AND ORS. contends that the Wakf Board could exercise its rights only over the existing wakf properties and since the mosque in question is not an existing wakf property, the 3rd respondent is not justified in taking over the management of the properties and constituting the committee without issuing any notice to the petitioner or the mosque committee.

There can be no dispute about the principle laid down by the Supreme Court in KARNATAKA BOARD OF WAKF'S case (1 supra), however in the case on hand as pointed above, the property in question was notified in the Gazette, dated 3-5-1984 as wakf property. In the circumstances, if the petitioner is aggrieved, he ought to have initiated appropriate proceedings in the Tribunal constituted under Section 83 of the Wakf Act. Without exhausting such an alternative remedy, the petitioner

cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India particularly when the matter involves several disputed questions of fact.

Similarly, the order passed under Section 18 of the Act which is under challenge in W.P.No.17473 of 2005 being only a consequential order does not warrant any interference by this Court at this stage.

In the circumstances, though I am not inclined to issue a Writ of Mandamus as prayed for, I deem it appropriate to dispose of the writ petitions granting leave and liberty to the petitioner to work out the appropriate remedy as available under law. It is made clear that this Court has not expressed any opinion on merits and it is open to the petitioner to produce all the relevant material in support of his claim, in which event the same shall be considered and appropriate orders will be passed by the Tribunal in accordance with law.

Both the Writ Petitions are accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 14-03-2006.

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